



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5508

Introduced 2/5/2010, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

215 ILCS 5/357.3	from Ch. 73, par. 969.3
215 ILCS 5/359d new	
215 ILCS 125/5-3	from Ch. 111 1/2, par. 1411.2

Amends the Illinois Insurance Code and the Health Maintenance Organization Act. Provides that no insurer shall rescind or cancel an accident and health insurance policy, except certain types of policies, on the basis of written information submitted on, with, or omitted from an insurance application. Provides that an insurance policy may not be rescinded or cancelled under the provisions concerning approval of health insurance rescissions more than 2 years after the effective date of the policy. Provides that an insurer shall apply for approval of a rescission or cancellation by submitting written information to the Director of Insurance. Sets forth provisions concerning the review and approval of rescissions and cancellations. Provides that an insurer or insured may appeal a decision by making a written request for a hearing within 30 days after the date the decision is mailed. Makes other changes. Contains a nonacceleration clause. Effective July 1, 2010.

LRB096 19498 RPM 34890 b

1 AN ACT concerning insurance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Section 357.3 and by adding Section 359d as follows:

6 (215 ILCS 5/357.3) (from Ch. 73, par. 969.3)

7 Sec. 357.3. "TIME LIMIT ON CERTAIN DEFENSES: (1) After 2
8 years from the date of issue of this policy no misstatements,
9 ~~except fraudulent misstatements,~~ made by the applicant in the
10 application for such policy shall be used to void the policy or
11 to deny a claim for loss incurred or disability (as defined in
12 the policy) commencing after the expiration of such 2 year
13 period."

14 (The foregoing policy provision shall not be so construed
15 as to affect any legal requirement for avoidance of a policy or
16 denial of a claim during such initial 2 year period, nor to
17 limit the application of section 357.15 through section 357.19
18 in the event of misstatement with respect to age or occupation
19 or other insurance.)

20 A policy which the insured has the right to continue in
21 force subject to its terms by the timely payment of premium (1)
22 until at least age 50 or, (2) in the case of a policy issued
23 after age 44, for at least 5 years from its date of issue, may

1 contain in lieu of the foregoing the following provisions (from
2 which the clause in parentheses may be omitted at the company's
3 option) under the caption "INCONTESTABLE":

4 "After this policy has been in force for a period of 2
5 years during the lifetime of the insured (excluding any period
6 during which the insured is disabled), it shall become
7 incontestable as to the statements contained in the
8 application."

9 (2) "No claim for loss incurred or disability (as defined
10 in the policy) commencing after 2 years from the date of issue
11 of this policy shall be reduced or denied on the ground that a
12 disease or physical condition not excluded from coverage by
13 name or specific description effective on the date of loss had
14 existed prior to the effective date of coverage of this
15 policy."

16 (Source: Laws 1967, p. 1735.)

17 (215 ILCS 5/359d new)

18 Sec. 359d. Prior approval of health insurance rescissions.

19 (a) This Section may be referred to as the Insurance
20 Contract Fairness Law.

21 (b) Notwithstanding any other provision of law, unless
22 approval is granted pursuant to subsection (c) of this Section,
23 no insurer shall rescind or cancel any policy of insurance,
24 contract, evidence of coverage or certificate that provides
25 coverage of the type specified in subsection (b) of Class 1 or

1 subsection (a) of Class 2 of Section 4 of the Insurance Code,
2 except short term, disability income, long-term care, accident
3 only, or limited or specified disease policies, on the basis of
4 written information submitted on, with, or omitted from an
5 insurance application by the insured. A policy of insurance,
6 contract, evidence of coverage or certificate may not be
7 rescinded or cancelled under subsection (c) of this Section
8 more than 2 years after the effective date of the policy,
9 contract, evidence of coverage, or certificate.

10 (c) An insurer shall apply for approval of such rescission
11 or cancellation by submitting written information to the
12 Director on an application in such form as the Director
13 prescribes. The insurer shall provide a copy of the application
14 for approval to the insured or the insured's representative.
15 Not later than 7 business days after receipt of the application
16 for approval, the insured or the insured's representative shall
17 have an opportunity to review the application and respond and
18 submit relevant information to the Director with respect to the
19 application. Not later than 15 business days after the
20 submission of information by the insured or the insured's
21 representative, the Director shall issue a written decision on
22 the application. The Director may approve the rescission or
23 cancellation if the Director finds that (1) the written
24 information submitted on or with the insurance application was
25 false at the time the application was made and the insured or
26 the insured's representative knew of the falsity therein and

1 the submission materially affected either the acceptance of
2 risk or the hazard assumed by the insurer or (2) the
3 information omitted from the insurance application was
4 knowingly omitted by the insured or the insured's
5 representative and the omission materially affected either the
6 acceptance of risk or the hazard assumed by the insurer. The
7 decision shall be mailed to the insured, the insured's
8 representative, if any, and the insurer.

9 (d) The Director shall not approve a rescission or
10 cancellation under subsection (c) of this Section if the
11 rescission or cancellation is initiated after a claim is
12 submitted by the insured unless the submitted claim bears a
13 direct relationship to the information found by the Director to
14 have been omitted or falsely submitted under subsection (c) of
15 this Section.

16 (e) An insurer or insured may appeal a decision by the
17 Director under this Section by making a written request for a
18 hearing before the Director within 30 days after the date the
19 Director's decision is mailed.

20 Section 10. The Health Maintenance Organization Act is
21 amended by changing Section 5-3 as follows:

22 (215 ILCS 125/5-3) (from Ch. 111 1/2, par. 1411.2)

23 (Text of Section before amendment by P.A. 96-833)

24 Sec. 5-3. Insurance Code provisions.

1 (a) Health Maintenance Organizations shall be subject to
2 the provisions of Sections 133, 134, 137, 140, 141.1, 141.2,
3 141.3, 143, 143c, 147, 148, 149, 151, 152, 153, 154, 154.5,
4 154.6, 154.7, 154.8, 155.04, 355.2, 356g.5-1, 356m, 356v, 356w,
5 356x, 356y, 356z.2, 356z.4, 356z.5, 356z.6, 356z.8, 356z.9,
6 356z.10, 356z.11, 356z.12, 356z.13, 356z.14, 356z.15 ~~356z.14~~,
7 356z.17 ~~356z.15~~, 359d, 364.01, 367.2, 367.2-5, 367i, 368a,
8 368b, 368c, 368d, 368e, 370c, 401, 401.1, 402, 403, 403A, 408,
9 408.2, 409, 412, 444, and 444.1, paragraph (c) of subsection
10 (2) of Section 367, and Articles IIA, VIII 1/2, XII, XII 1/2,
11 XIII, XIII 1/2, XXV, and XXVI of the Illinois Insurance Code.

12 (b) For purposes of the Illinois Insurance Code, except for
13 Sections 444 and 444.1 and Articles XIII and XIII 1/2, Health
14 Maintenance Organizations in the following categories are
15 deemed to be "domestic companies":

16 (1) a corporation authorized under the Dental Service
17 Plan Act or the Voluntary Health Services Plans Act;

18 (2) a corporation organized under the laws of this
19 State; or

20 (3) a corporation organized under the laws of another
21 state, 30% or more of the enrollees of which are residents
22 of this State, except a corporation subject to
23 substantially the same requirements in its state of
24 organization as is a "domestic company" under Article VIII
25 1/2 of the Illinois Insurance Code.

26 (c) In considering the merger, consolidation, or other

1 acquisition of control of a Health Maintenance Organization
2 pursuant to Article VIII 1/2 of the Illinois Insurance Code,

3 (1) the Director shall give primary consideration to
4 the continuation of benefits to enrollees and the financial
5 conditions of the acquired Health Maintenance Organization
6 after the merger, consolidation, or other acquisition of
7 control takes effect;

8 (2) (i) the criteria specified in subsection (1) (b) of
9 Section 131.8 of the Illinois Insurance Code shall not
10 apply and (ii) the Director, in making his determination
11 with respect to the merger, consolidation, or other
12 acquisition of control, need not take into account the
13 effect on competition of the merger, consolidation, or
14 other acquisition of control;

15 (3) the Director shall have the power to require the
16 following information:

17 (A) certification by an independent actuary of the
18 adequacy of the reserves of the Health Maintenance
19 Organization sought to be acquired;

20 (B) pro forma financial statements reflecting the
21 combined balance sheets of the acquiring company and
22 the Health Maintenance Organization sought to be
23 acquired as of the end of the preceding year and as of
24 a date 90 days prior to the acquisition, as well as pro
25 forma financial statements reflecting projected
26 combined operation for a period of 2 years;

1 (C) a pro forma business plan detailing an
2 acquiring party's plans with respect to the operation
3 of the Health Maintenance Organization sought to be
4 acquired for a period of not less than 3 years; and

5 (D) such other information as the Director shall
6 require.

7 (d) The provisions of Article VIII 1/2 of the Illinois
8 Insurance Code and this Section 5-3 shall apply to the sale by
9 any health maintenance organization of greater than 10% of its
10 enrollee population (including without limitation the health
11 maintenance organization's right, title, and interest in and to
12 its health care certificates).

13 (e) In considering any management contract or service
14 agreement subject to Section 141.1 of the Illinois Insurance
15 Code, the Director (i) shall, in addition to the criteria
16 specified in Section 141.2 of the Illinois Insurance Code, take
17 into account the effect of the management contract or service
18 agreement on the continuation of benefits to enrollees and the
19 financial condition of the health maintenance organization to
20 be managed or serviced, and (ii) need not take into account the
21 effect of the management contract or service agreement on
22 competition.

23 (f) Except for small employer groups as defined in the
24 Small Employer Rating, Renewability and Portability Health
25 Insurance Act and except for medicare supplement policies as
26 defined in Section 363 of the Illinois Insurance Code, a Health

1 Maintenance Organization may by contract agree with a group or
2 other enrollment unit to effect refunds or charge additional
3 premiums under the following terms and conditions:

4 (i) the amount of, and other terms and conditions with
5 respect to, the refund or additional premium are set forth
6 in the group or enrollment unit contract agreed in advance
7 of the period for which a refund is to be paid or
8 additional premium is to be charged (which period shall not
9 be less than one year); and

10 (ii) the amount of the refund or additional premium
11 shall not exceed 20% of the Health Maintenance
12 Organization's profitable or unprofitable experience with
13 respect to the group or other enrollment unit for the
14 period (and, for purposes of a refund or additional
15 premium, the profitable or unprofitable experience shall
16 be calculated taking into account a pro rata share of the
17 Health Maintenance Organization's administrative and
18 marketing expenses, but shall not include any refund to be
19 made or additional premium to be paid pursuant to this
20 subsection (f)). The Health Maintenance Organization and
21 the group or enrollment unit may agree that the profitable
22 or unprofitable experience may be calculated taking into
23 account the refund period and the immediately preceding 2
24 plan years.

25 The Health Maintenance Organization shall include a
26 statement in the evidence of coverage issued to each enrollee

1 describing the possibility of a refund or additional premium,
2 and upon request of any group or enrollment unit, provide to
3 the group or enrollment unit a description of the method used
4 to calculate (1) the Health Maintenance Organization's
5 profitable experience with respect to the group or enrollment
6 unit and the resulting refund to the group or enrollment unit
7 or (2) the Health Maintenance Organization's unprofitable
8 experience with respect to the group or enrollment unit and the
9 resulting additional premium to be paid by the group or
10 enrollment unit.

11 In no event shall the Illinois Health Maintenance
12 Organization Guaranty Association be liable to pay any
13 contractual obligation of an insolvent organization to pay any
14 refund authorized under this Section.

15 (g) Rulemaking authority to implement Public Act 95-1045
16 ~~this amendatory Act of the 95th General Assembly~~, if any, is
17 conditioned on the rules being adopted in accordance with all
18 provisions of the Illinois Administrative Procedure Act and all
19 rules and procedures of the Joint Committee on Administrative
20 Rules; any purported rule not so adopted, for whatever reason,
21 is unauthorized.

22 (Source: P.A. 95-422, eff. 8-24-07; 95-520, eff. 8-28-07;
23 95-876, eff. 8-21-08; 95-958, eff. 6-1-09; 95-978, eff. 1-1-09;
24 95-1005, eff. 12-12-08; 95-1045, eff. 3-27-09; 95-1049, eff.
25 1-1-10; 96-328, eff. 8-11-09; 96-639, eff. 1-1-10; revised
26 10-23-09.)

1 (Text of Section after amendment by P.A. 96-833)

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8 356z.10, 356z.11, 356z.12, 356z.13, 356z.14, 356z.15, 356z.17,
9 356z.18, 359d, 364.01, 367.2, 367.2-5, 367i, 368a, 368b, 368c,
10 368d, 368e, 370c, 401, 401.1, 402, 403, 403A, 408, 408.2, 409,
11 412, 444, and 444.1, paragraph (c) of subsection (2) of Section
12 367, and Articles IIA, VIII 1/2, XII, XII 1/2, XIII, XIII 1/2,
13 XXV, and XXVI of the Illinois Insurance Code.

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15 Sections 444 and 444.1 and Articles XIII and XIII 1/2, Health
16 Maintenance Organizations in the following categories are
17 deemed to be "domestic companies":

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19 Plan Act or the Voluntary Health Services Plans Act;

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21 State; or

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24 of this State, except a corporation subject to
25 substantially the same requirements in its state of

1 organization as is a "domestic company" under Article VIII
2 1/2 of the Illinois Insurance Code.

3 (c) In considering the merger, consolidation, or other
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5 pursuant to Article VIII 1/2 of the Illinois Insurance Code,

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7 the continuation of benefits to enrollees and the financial
8 conditions of the acquired Health Maintenance Organization
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10 control takes effect;

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12 Section 131.8 of the Illinois Insurance Code shall not
13 apply and (ii) the Director, in making his determination
14 with respect to the merger, consolidation, or other
15 acquisition of control, need not take into account the
16 effect on competition of the merger, consolidation, or
17 other acquisition of control;

18 (3) the Director shall have the power to require the
19 following information:

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21 adequacy of the reserves of the Health Maintenance
22 Organization sought to be acquired;

23 (B) pro forma financial statements reflecting the
24 combined balance sheets of the acquiring company and
25 the Health Maintenance Organization sought to be
26 acquired as of the end of the preceding year and as of

1 a date 90 days prior to the acquisition, as well as pro
2 forma financial statements reflecting projected
3 combined operation for a period of 2 years;

4 (C) a pro forma business plan detailing an
5 acquiring party's plans with respect to the operation
6 of the Health Maintenance Organization sought to be
7 acquired for a period of not less than 3 years; and

8 (D) such other information as the Director shall
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10 (d) The provisions of Article VIII 1/2 of the Illinois
11 Insurance Code and this Section 5-3 shall apply to the sale by
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13 enrollee population (including without limitation the health
14 maintenance organization's right, title, and interest in and to
15 its health care certificates).

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17 agreement subject to Section 141.1 of the Illinois Insurance
18 Code, the Director (i) shall, in addition to the criteria
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20 into account the effect of the management contract or service
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1 Small Employer Rating, Renewability and Portability Health
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10 of the period for which a refund is to be paid or
11 additional premium is to be charged (which period shall not
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13 (ii) the amount of the refund or additional premium
14 shall not exceed 20% of the Health Maintenance
15 Organization's profitable or unprofitable experience with
16 respect to the group or other enrollment unit for the
17 period (and, for purposes of a refund or additional
18 premium, the profitable or unprofitable experience shall
19 be calculated taking into account a pro rata share of the
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21 marketing expenses, but shall not include any refund to be
22 made or additional premium to be paid pursuant to this
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4 describing the possibility of a refund or additional premium,
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9 unit and the resulting refund to the group or enrollment unit
10 or (2) the Health Maintenance Organization's unprofitable
11 experience with respect to the group or enrollment unit and the
12 resulting additional premium to be paid by the group or
13 enrollment unit.

14 In no event shall the Illinois Health Maintenance
15 Organization Guaranty Association be liable to pay any
16 contractual obligation of an insolvent organization to pay any
17 refund authorized under this Section.

18 (g) Rulemaking authority to implement Public Act 95-1045,
19 if any, is conditioned on the rules being adopted in accordance
20 with all provisions of the Illinois Administrative Procedure
21 Act and all rules and procedures of the Joint Committee on
22 Administrative Rules; any purported rule not so adopted, for
23 whatever reason, is unauthorized.

24 (Source: P.A. 95-422, eff. 8-24-07; 95-520, eff. 8-28-07;
25 95-876, eff. 8-21-08; 95-958, eff. 6-1-09; 95-978, eff. 1-1-09;
26 95-1005, eff. 12-12-08; 95-1045, eff. 3-27-09; 95-1049, eff.

1 1-1-10; 96-328, eff. 8-11-09; 96-639, eff. 1-1-10; 96-833, eff.
2 6-1-10.)

3 Section 95. No acceleration or delay. Where this Act makes
4 changes in a statute that is represented in this Act by text
5 that is not yet or no longer in effect (for example, a Section
6 represented by multiple versions), the use of that text does
7 not accelerate or delay the taking effect of (i) the changes
8 made by this Act or (ii) provisions derived from any other
9 Public Act.

10 Section 99. Effective date. This Act takes effect July 1,
11 2010.